IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1012 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARAMSHI V TOGADIA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 1012 of 2001

MR PC KAVINA for Petitioner No. 1

MR MANISH K DAGLI, AGP for Respondent Nos. 1-2

DELETED for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 02/07/2003

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India seeks the following relief :

"(A) Issue a writ of mandamus or any other appropriate writ, order and/or direction, directing the respondents, their officers, servants and/or agents to enter the name of the petitioner in the land records, to the extent of 12 acres and 15 gunthas of survey Number 28 and 1 acre and 16 gunthas of survey Number 58 of Rajkot Rural Revenue Survey. "

2. The petitioner purchased lands bearing Survey No.28 admeasuring 12 acres and 15 gunthas and bearing Survey No.58 admeasuring 1 acre 16 gunthas situated in Rajkot Rural Revenue Survey by a registered sale deed dated 04-03-1988. The vendors were Babubhai Naranbhai Patel and Mohanbhai Naranbhai Patel. It is not in dispute that full sale consideration passed from the petitioner to the vendors. In pursuance of the aforesaid purchase, the petitioner approached respondent No.2 seeking mutation entry in the revenue record and requested for the name of the petitioner being entered accordingly. As the said respondent No.2 did not accept and respond to the application dated 19-08-2000, a notice came to be issued by the advocate of the petitioner on 06-12-2000. There being no response to the said notice, a second notice by Regd. Post A.D. was sent on 26-12-2000. There being yet no response, the petitioner has approached this Court seeking the aforementioned relief.

3. A short history of the backdrop of the facts and circumstances becomes necessary at this stage so as to appreciate reasons as to why various contentions advanced on behalf of the petitioner and the respondent - State are not required to be dealt with.

4. The vendors, namely, Babubhai Naranbhai Patel and Mohanbhai Naranbhai Patel filed Civil Suit bearing No.956 of 1990 in the Court of Civil Judge (S.D.) at Rajkot seeking declaration to the effect that the order of the competent authority passed under Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the U.L.C. Act') dated 18-07-1984 was null and void. Alongwith the said Civil Suit the vendors also preferred an application seeking interim protection by way of Exh.5 application. On 29-02-1992 the Court allowed Exh.5 application in favour of the plaintiffs - vendors and allowed possession of the lands in question to be held by the plaintiffs. The respondent - State filed Civil Misc. Appeal No.58 of

1992 in the District Court, Rajkot, against the said order but the said appeal came to be dismissed on 11-01-1994.

5. The defendant - State preferred a petition under Section 115 of the Code of Civil Procedure, 1908 being Civil Revision Application No.1166 of 1994. It was contended on behalf of the defendant - State that in pursuance of the declaration of surplus land by the competent authority possession of the lands had already been taken over on 17-07-1987. However, the said contention was neither accepted by the lower Courts, while granting interim injunction and rejecting the appeal therefrom but also by this Court in the Civil Revision Application and ultimately on 26-06-1995 this Court upheld the findings of the lower Courts as regards possession of the lands in question being with the plaintiffs and dismissed the application filed by the defendant - State.

6. Ultimately on 11-11-1997, the Court of the 7th Jt. Civil Judge (S.D.), Rajkot by a judgement and order decreed the suit of the plaintiffs declaring that order dated 18-07-1984 passed by the competent authority was void. By way of consequential relief an order of perpetual injunction also came to be made in favour of the vendors - plaintiffs and restraining the defendants from disturbing or taking from possession of the suit property.

7. It appears that till 25-11-2002 no appeal was preferred against the aforesaid judgment and order dated 11-11-1997. As there was delay of about 4 years and 8 months, an application seeking condonation of delay also came to be preferred before the District Court being Civil Misc. Application No.82 of 2002. As the said application was allowed and delay in filing the appeal was condoned on 04-01-2003, the original plaintiffs preferred Civil Revision Application on 28-01-2003 bearing Civil Revision Application No.41 of 2003. It is an admitted position between the parties that the said Civil Revision Application has been admitted and is pending as on today.

8. It was submitted by Mr.Kavina, the learned advocate appearing on behalf of the petitioner, that the preliminary objection raised on behalf of the respondent State may not be entertained and this petition should be heard and be decided. The preliminary objection of the respondent - State as ventilated through the learned A.G.P. Mr.Dagli is to the effect that in light of the

pendency of the aforesaid Civil Revision Application being Civil Revision Application No.41 of 2003 and the appeal filed before the District Court, this petition should not be proceeded with and be adjourned so as to ensure that no further complexities arise, which would happen if the respondent - State is directed to pass mutation entry as prayed for in the petition.

9. Having heard the learned advocates for the respective parties, it is apparent that the prayer made on behalf of the respondent - State cannot be acceded to. It is an admitted position that a competent Court has passed an order in the Civil Suit on 11-11-1997 and the said judgement and order are operative as on today. There is no stay against the said judgement and order. Therefore, it is apparent that the vendors have been held to be holding the lands in question with complete right, title and interest, which would include the right to sell / transfer / alienate the lands in question in favour of any person of their choice in accordance with the relevant laws governing such transaction. The transaction between the petitioner and the vendors which has been entered into by a registered sale deed dated 04-03-1988 has not been found or shown to be in violation of any law applicable to such a transaction. If this be the position, it would not be open to the respondent - State to deny passing mutation entry in the name of the petitioner only for the reason that some litigation regarding applicability or otherwise of the provisions of the U.L.C. Act taken against the vendors are pending. At the cost of repetition it requires to be stated that a competent Court has held that the provisions of the U.L.C. Act do not apply to the lands in question and it is an admitted position that the sale transaction has been entered into between the petitioner and the plaintiff vendors after the decision was rendered by the competent Court in November 1997. The said order is a valid order and the operation thereof has not been stayed by any higher forum as on today. In the circumstances, the respondent - State cannot have any objection to accept the application seeking mutation of the revenue record and entering the name of the petitioner in relation to the lands in question.

10. As already stated hereinbefore, the application made by the petitioner on 19-08-2000 was followed by two notices issued through the advocate of the petitioner, and the respondent - authority has not even taken care to respond to the said application. If the respondent State had any reason not to pass mutation entry, the least that was expected was that a written communication, citing the

reason for not accepting the application, could have been sent to the petitioner. For aught we know, if, at the relevant point of time, had the necessary communication been forwarded to the petitioner by the respondent authority, and if the petitioner was satisfied with the reasons mentioned in such a communication, possibly this petition would not have become necessary.

11. During the course of hearing Mr.Kavina on behalf of the petitioner submitted that in light of the Repeal Act i.e. The Urban Land (Ceiling and Regulation) Repeal Act, 1999, the appeal filed by the respondent - State before the District Court against the judgement dated 11-11-1997 was bound to fail and in the present petition the respondent - State should not be permitted to take recourse to those proceedings to postpone the hearing of the petition. Suffice it to state that, it is not necessary to deal with the effect of the Repeal Act on the pending First Appeal as the same is not the subject matter of this petition. In the circumstances, it is not necessary to deal with the said contention.

12. In the circumstances, in light of what is stated hereinbefore it is clarified that though various submissions were made on merits of the controversy between the parties, namely, the vendors - plaintiffs and the State on one hand, and the petitioner and the respondent - State on the other hand, it is not necessary to deal with the merits of the said contentions and the parties are at liberty to raise the same in appropriate proceedings before appropriate forum as may be available to them in law.

13. The petition is accordingly allowed. The respondent - State is directed to pass necessary mutation entry and enter the name of the petitioner in revenue record in relation to lands admeasuring 12 acres and 15 gunthas of Survey No.28 and land admeasuring 1 acre and 16 gunthas of Survey No.58 of Rajkot Rural Revenue Survey. The mutation entry to be passed within a period of 4 weeks from the date of receipt of writ of this Court.

At this stage Mr.Dagli, the learned A.G.P., prays that this judgement and order be stayed for a period of four weeks. In the circumstances, after hearing the parties, the request made by the learned A.G.P. is rejected.

Rule is made absolute accordingly. There shall be no order as to costs.

Sd/-

[D.A.MEHTA, J]

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